



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

April 13, 1989

Honorable Fred Toler  
Executive Director  
Texas Commission on Law  
Enforcement Officer  
Standards and Education  
1606 Headway Circle, Suite 100  
Austin, Texas 78754

LO-89-36

Dear Mr. Toler:

You ask whether the Texas Commission on Law Enforcement Officer Standards and Education may approve an application from the Adjutant General's Department for the licensing of an armed (civilian) public security officer employed by that department.

The adjutant general derives his power from subchapter B of chapter 431 of the Government Code and specifically from its provisions governing the discharge of his duties. The adjutant general may exercise those powers expressly delegated to him or clearly implied from the express powers. See Attorney General Opinion JM-742 (1987).

Section 431.022 of the Government Code provides that the adjutant general is the head of the Adjutant General's Department and controls the military department of the State. He is subordinate only to the governor in matters pertaining to the military department of the state and state military forces.

The adjutant general may employ such employees as may be necessary to carry on the operations of the department. Gov't Code § 431.028. The adjutant general is empowered to fix and make reasonable allowance for store rent and storage for safekeeping of supplies. Gov't Code, § 431.031(a)(3). He is authorized to adopt regulations for the custody, use and protection of records and property. Gov't Code, § 431.033.

Section 431.029 of the Government Code states:

§ 431.029. General Duties

The adjutant general shall:

(2) perform for the state as near as practicable the duties that pertain to the chiefs of staff of the army and air force and the secretaries of the military services, under regulations and customs of the United States armed forces.

The Secretaries of the Army and the Air Force are responsible for and have the authority necessary to conduct all affairs of their department, including the construction, maintenance and repair of buildings. 10 U.S.C. §§ 3103, 8013 (Supp. 1989). We do not construe this language as empowering the military secretaries to employ licensed civilians as armed security officers.

Section 415.001 of the Government Code defines public security officer as follows:

'Public security officer,' for the purposes of this Act, means any person employed or appointed as an armed security officer by the state or any political subdivision of the state, but does not include security officers employed by private security companies who contract with the state or any political subdivision of the state to provide security services for the entity.'

In Attorney General Opinion JM-878 (1988) the matter of licensing public security officers by the Texas Commission on Law Enforcement Standards and Education was discussed:

A 'public security officer' is 'any person employed or appointed as an armed security officer by the state or by any political subdivision of the state,' and all 'public security officers' must be licensed. The provisions of article 4413(29aa) that apply to the issuance or revocation of a license to a peace officer also apply to the issuance or revocation of a license for a public security officer. See generally Acts 1987, 70th Leg.,

ch. 758, §§ 2 and 3, amending article 4413 (29aa), sections 6(c) and (h), V.T.C.S., to be codified in chapter 415 of the Government Code. The Commission has established permanent standards for the licensing of 'public security officers' that are different, and less stringent, than those applicable to the commissioned peace officers. See 37 T.A.C. § 211.102 and compare 37 T.A.C. § 211.77.

In Attorney General Opinion JM-742 the matter of whether the Port of Houston Authority may employ armed security guards was addressed. Like the Adjutant General's Department, the authority was empowered with broad express powers for the conduct of its vital business. The authority possessed general rulemaking power to protect its property and persons using the property. It was empowered to employ persons necessary for the construction, maintenance, operation and development of the business and facilities of the authority. However, it was concluded in Attorney General Opinion JM-742 that there was an absence of express power granted the authority to employ armed security guards. It was further concluded that to find implied power for the authority to hire security guards was an impermissible enlargement of the express powers of the authority.

The Adjutant General's Department has neither express power or implied power to employ an armed security officer, and thus has no authority to submit applications to the Commission on Law Enforcement Officer Standards and Education for licenses for such persons.

Very truly yours,



Sarah Woelk, Chief  
Letter Opinion Section



Rick Gilpin, Chairman  
Opinion Committee

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APPROVED: OPINION COMMITTEE

SW/RG/TGD/bc